Supreme Court, U. S.
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IN THE

Supreme Court of the United States

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OCTOBER TERM 1976

SHARON L. SCARRELLA,

Petitioner,

vs.

THE STATE OF MINNESOTA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT AND THE RAMSEY COUNTY (MINNESOTA) DISTRICT COURT

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I. STATEMENT OF THE CASE

The instant case involves two separate actions against Petitioner, Sharon L. Scarrella.

In the first action, Petitioner was charged with Operating a Repair Garage without a License, contrary to St. Paul Legislative Code Section—. The offense was charged as a non-criminal "petty misdemeanor" pursuant to Rule 23.04 and 23.06 of the Minnesota Rules of Criminal Procedure. Consequently, the Petitioner was not entitled to a jury trial. Rule 23.05(1). The matter was tried to the Ramsey County Munici-

pal Court, without a jury, on November 3, 1975. The Petitioner was found guilty.

In the second action, Petitioner was charged with Obstructing Legal Process, contrary to Minnesota Statute 609.50. Since this matter was also charged as a "petty misdemeanor", the Petitioner tried the case to a judge of the Ramsey County Municipal Court without a jury. On January 2, 1976, Petitioner was convicted.

Both cases were appealed to the Ramsey County District Court pursuant to Rule 28.01 (2) of the Minnesota Rules of Criminal Procedure. On May 26, 1976, both cases were dismissed due to certain jurisdictional defects in perfecting the appeals to district court.

The Petitioner has not attempted to appeal the instant controversy to the Minnesota Supreme Court and has not attempted to institute any action in United States District Court. Instead, Petitioner has proceeded directly from the Ramsey County District Court to the United States Supreme Court, seeking a Writ of Certiorari.

During the pendency of this action, Petitioner has filed or attempted to file affidavits of prejudice against all the judges of the Ramsey County Municipal Court, all the judges of the Ramsey County District Court, and all the justices of the Minnesota Supreme Court. The Petitioner contends that no members of any organized bar association can decide her case without bias.

II. OBJECTION TO THE JURISDICTION OF THE COURT

Respondent, through its attorney, Harriet Lansing, hereby objects to the jurisdiction of this Court and prays that the Court decline to issue a Writ of Certiorari to review the order of the Ramsey County District Court rendered in these proceedings on May 26, 1976.

III. ARGUMENT

A) PETITIONER HAS FAILED TO SHOW THAT RELIEF IS NOT AVAILABLE IN ANY OTHER COURT OR THROUGH ANOTHER APPELLATE PROCESS.

It has been often stated that Certiorari will not be issued where there is a plain and equally adeuate remedy by appeal or otherwise. *American Constr. Co. v. Jacksonville, etc. R. Co.*, 148 U. S. 372, 13 S. Ct. 758, 37 L. Ed. 486 (1893); *U. S. Alkali Export Ass'n. v. U. S.*, 325 U. S. 196, 65 S.Ct. 1120, 89 L. Ed. 1554 (1945). Certiorari is an extraordinary writ and the writ is available only where there is no other remedy. *Miller v. Sanford*, 59 F. Supp. 812 (D. C. Ga. 1945), cert. den 326 U. S. 787, 66 S. Ct. 472, 90 L. Ed. 478, cert. den. 330 U.S. 830, 67 S.Ct. 864, 91 L. Ed. 1279.

Petitioner has not sought to correct any error that might have occurred below, either by appeal to the Minnesota Supreme Court or by an action in Federal District Court. Moreover, Petitioner has failed to provide a concise statement of the jurisdictional grounds in her brief as required by Supreme Court rules 40 (1)(b); 31 (2); and 23 (1)(b).

Additionally, Petitioner cites no authority for the proposition that these requirements are waived where the Petitioner

files affidavits of prejudice against the judges in the forums where relief might be obtained. There is no rule of law that equates the filing of affidavits of prejudice with the exhaustion of remedies.

Without a showing that Petitioner has exhausted her available remedies, this Court is without jurisdiction.

B) PETITIONER HAS FAILED TO DEMONSTRATE ANY SPECIAL OR IMPORTANT REASONS WHY A REVIEW ON WRIT OF CERTIORARI SHOULD BE GRANTED.

Essentially, Petitioner contends that she was deprived of her right to jury trial because petty misdemeanors are tried to the court under Minnesota Rules. She believes this is contrary to both the Minnesota and the Federal Constitutions.

If Petitioner relies on the Minnesota Constitution, her case presents no federal issue and should be resolved in the Minnesota Supreme Court.

If she relies on a violation of the Federal Constitution, it is clear that no novel question is presented and that Federal Constitutional principles have not been improperly decided by the Minnesota state courts. See Supreme Court Rule 19 (1)(a).

> Minnesota, in denying jury trials in "petty misdemeanors", is merely following the rule that has long been expressed by this Court. That is, the right to a jury trial does not apply to petty offenses. *Bloom v. State*, 391 U. S. 194, 88 S. Ct. 1477, 20 L. Ed. 2d 522 (1968); *Frank v. U. S.*, 395 U.S. 147, 89 S.Ct. 1503, 23 L. Ed. 2d 162, reh. den. 396 U. S. 869, 90 S. Ct. 34, 24 L. Ed. 2d 123 (1969).

IV. CONCLUSION

Respondent objects to this Court's jurisdiction on grounds that (1) Petitioner has not exhausted her judicial remedies in either state courts or the lower federal courts and that (2) no new federal question is presented, nor has Minnesota improperly decided the jury trial issues presented by Petitioner.

Respectfully submitted,

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